

REMARKS

The specification has been amended in accordance with the recommendations made by the Patent Examiner. In addition, the specification was amended to appropriately show the use of the trademarks FRISBEE and NERF.

The applicant has further amended claim 1 as was suggested by the Patent Examiner to correct an informality appearing therein.

The rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over the composite reference formed by U.S. Patent No. 5,984,753 to Perez in view of U.S. Patent No. 4,262,911 to Opresik et al and U.S. Patent No. 5,287,561 to Spector is respectfully traversed.

The Patent Examiner has correctly noted that Perez does not disclose an annular rim located below and spaced from the transverse axis, with the upper portion of the spherically shaped body being larger in area than the lower portion of the body. Further, the Patent Examiner correctly observed that Perez does not teach the specific design of the annular rim as claimed.

The Patent Examiner then asserts that the annular rim 17 of Opresik et al is of the same design as claimed in claim 1. This assertion is incorrect. The circular wing 17 of Opresik does not curve outwardly and downwardly from the upper portion 16 (Fig. 4) and then intersects the second surface 18. In contrast thereto, as shown in Fig. 2 of applicant's drawings, surface 22 which is directly opposite the transverse axis 16 curves outwardly and downwardly from the upper portion 12 and intersects the second surface 24.

In addition, the Patent Examiner has misinterpreted or misread Spector. There is no written statement in Spector that the dome-shaped section 10B is larger than section 10A. The dome-shaped elements are arranged in a stacking or nesting relationship, one over the other for assembly purposes. In Spector, the ends or rims of the dome-shaped sections are tied or connected into the annular disc 11 at different points. It would appear that the dome-shaped sections are of the same size. In fact, it would not be financially prudent to make the sections 10A and 10B of different sizes since they could not be used interchangeably. Fig. 5 shows the sections 10A and 10B expanded and of the same size and configuration.

It is submitted that the upper portion (10B) is not larger in area than the lower portion 10A since the ends or rims of the dome-shaped sections are connected at different points to the annular disc 11. Thus, there is no transverse axis which is above or below the annular disc 11 as clearly shown in Fig. 5 and therefore it cannot be said with any degree of certainty that the annular disc 11 in Fig. 5 is located below and spaced from the transverse axis. There is no teaching in the patent to lead the Patent Examiner to that conclusion. In fact, the teaching is to the contrary.

Column 4, lines 31-37 inclusive states as follows:

... When the hat shown in its hat mode in Fig. 1 is converted into its flying object mode, it assumes the form shown in Fig. 4 in which the inner and outer sections 10A and 10B of the crown together create the outer fabric casing of a spherical ball which is encircled about its equator by annular disc 11, which is in the hat mode forms the brim of the hat. (Emphasis added.)

Note the use of the word "equator". The New College Edition of the American Heritage Dictionary, copyrighted 1975 by the American Heritage Publishing Co., Inc., defines the word "equator" as follows: "The great circle circumscribing the earth's surface, the reckoning datum of latitudes and dividing boundary of Northern and Southern hemispheres, formed by the intersection of a plane passing through the earth's center perpendicular to its axis of rotation."

Thus, the teachings of the patent as disclosed in the written specification teaches away from the position taken by the Patent Examiner in interpreting Spector in such as a way that it includes an upper portion (10B) which is larger than lower portion (10A) and further that the transverse axis is above the annular rim. This position is contrary to the teachings of the patent.

In view of the foregoing, it is submitted that the composite reference should be withdrawn and that the application should be passed to issue.

By:

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CERTIFICATE OF MAILING

I hereby certify that this *Amendment* is being deposited with the United States Postal Service on this 14 day of MAY, 2004 in an envelope as first class mail addressed to the Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313.

Donald M. Benson 5/14/04

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